# IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF ILLINOIS

CAPLINGER, by RAYMOND ) CAPLINGER, as Independent Administrator ) of the Estate of Mary Kay Caplinger, )	
Plaintiff,	
vs. )	CIVIL NO. 06-43-GPM
TIME INSURANCE COMPANY, f/k/a ) FORTIS INSURANCE COMPANY, )	
Defendant. )	

### **ORDER**

#### **MURPHY, Chief District Judge:**

This action seeks compensatory damages for what Plaintiff claims was the "wrongful termination" of health insurance coverage issued by Defendant (*see* first amended complaint, Doc. 2). Defendant moves to dismiss Count 2, which seeks punitive damages for this alleged breach of contract, on the basis that punitive damages are not recoverable in a breach of contract action under Illinois law.

Defendant's motion was filed on May 8, 2006. Pursuant to Local Rule, Plaintiff's response was due no later than June 8, 2006. Nothing was filed.

Pursuant to Southern District of Illinois Local Rule 7.1(c), "[f]ailure to timely file an answering brief to a motion may, in the Court's discretion, be considered an admission of the merits of the motion." The Court exercises its discretion, and the motion to dismiss (Doc. 9) is

## **GRANTED**. Count 2 is **DISMISSED** on the merits.

## IT IS SO ORDERED.

DATED: 06/13/06

s/ G. Patrick Murphy
G. PATRICK MURPHY
Chief United States District Judge